IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950

No. 337

PUETT ELECTRICAL STARTING GATE CORPORATION,

Petitioner,

*v.*

HARFORD AGRICULTURAL & BREEDERS' ASSOCIATION and UNITED STARTING GATE CORPORATION,

Respondents.

## RESPONDENTS' REPLY BRIEF

We believe the Court may be aided by our answer to three contentions of petitioner's reply brief.

I.

The excerpt from the Trial Court's opinion quoted at page 2 of petitioner's reply brief did not have to do with infringement but related solely to alleged unfair competition, as is evident both from the portion petitioner quotes and from the immediately following statement:

> "* * * We are influenced in this conclusion to some extent by the character of the devices here in issue. That is to say, * * * there is no evidence that the latter [Puett's device] had become so distinctive merely in appearance as to condemn what United did, apart

> from the question of infringement, particularly since starting devices are not like commodities for which there is a general market but are dealt in only by formal, special contracts" (R. 17).

Petitioner does not indicate any point at which either the Trial Court or the Appellate Court referred to or followed any oral testimony in reaching a conclusion with respect to infringement.

## II.

It ill becomes petitioner's attorney to dispute the models after he admitted in open court that "we can take them and use them, as I say, showing the combination and arrangement of the parts in which we are interested" (R. 152). The alleged "important discrepancy" referred to at page 3 of petitioner's reply related to the model of the *Harris* patent, the patent petitioner has abandoned, and not to the ***Whann*** patent here in issue (See R. 101, 102, 103, 104; the abandoned *Harris* patent is referred to as Patent No. '952 in the record). Petitioner repeats this misleading reference to a dispute concerning a model by characterizing the testimony on pages 102 and 104 of the record as relating to "petitioner's patented starting gate", when the model actually discussed was that of the abandoned *Harris* patent. No alleged shortcomings of a model of a patent not here in issue, the Appellate Court's decision as to which is not questioned by petitioner, can be of any significance.

## III.

The simplicity or complexity of the structure involved is not determined by the repute of an expert witness or the time consumed at trial. A glance at the patent itself (R. 179) discloses the unquestionable simplicity of the two disengageable hooks 45 and 47 that comprise the patented latch. Petitioner did not, at the trial or on appeal, rely

on the photograph at R. 142, to which it now seeks to confine attention, but instead relied on its own drawings of the simple non-disengaging link that holds the doors in respondents' structure (R. 137-141). Any apparent complexity of the photograph resides in duplication of stalls and in the bridge-like superstructure, neither of which is disclosed in petitioner's patent.

## CONCLUSION

**Petitioner's reply brief is misleading and inaccurate.**

Respectfully submitted,

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October 27, 1950.